

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15th day of October, two thousand eight.

PRESENT:

JON O. NEWMAN,
ROGER J. MINER,
JOSÉ A. CABRANES,
Circuit Judges.

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JS OCEAN LINERS PTE LTD.,

Plaintiff-Appellant,

-v.-

No. 07-2118-cv

WING LEUNG SHIPPING CO. LTD.,

Defendant-Appellee,

- and -

STANDARD CHARTERED BANK,

Garnishee.

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COUNSEL FOR APPELLANT:

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COUNSEL FOR APPELLEE:

LEROY LAMBERT (Michael P. Smith, *on the briefs*),
Blank Rome LLP, New York, NY.

Appeal from an order of the United States District Court for the Southern District of New York (Miriam Goldman Cedarbaum, *Judge*).

**UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED,
ADJUDGED, AND DECREED** that the order of the District Court is hereby **AFFIRMED**.

Plaintiff JS Ocean Liners Pte Ltd. appeals from an interlocutory order of the United States District Court for the Southern District of New York (Miriam Goldman Cedarbaum, *Judge*), vacating in part a previous order of maritime attachment pursuant to Rule E of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure.¹ *See* Fed. R. Civ. P. Supp. R. E(4)(f) (“Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules.”). We assume the parties’ familiarity with the underlying facts and procedural history of the case.

We review a district court’s decision to vacate an order of maritime attachment under an “abuse of discretion” standard. *See Aqua Stoli Shipping Ltd. v. Gardner Smith Pty. Ltd.*, 460 F.3d 434, 439 (2d Cir. 2006) (noting that “a district court necessarily abuses its discretion when its decision rests on an error of law or a clearly erroneous finding of fact”).

Upon review of the record, we find no basis to disturb the District Court’s order. The District Court found that, in light of the contours of the underlying litigation in India, the vessel owner’s bank guarantee “adequately protect[ed] the plaintiff” because there was a “very unlikely possibility” that the underlying lawsuit, which concerned the seaworthiness of a vessel, could be successful against plaintiff—a sub-charterer—but not against the vessel’s owner. *See Aqua Stoli*, 460 F.3d at 445 (stating that a district court may, in its discretion, vacate an otherwise valid attachment if, among other possible justifications, “the plaintiff has already obtained sufficient security for the potential judgment, by attachment or otherwise”). Since plaintiff already had benefitted from adequate security “by attachment or otherwise” obtained by Al Gyas, *id.*, it was within the Court’s discretion to vacate the maritime attachment against defendant. The District Court was also entitled to find that plaintiff’s claim was not ripe. *See Greenwich Marine, Inc. v. S.S. Alexandra*, 339 F.2d 901, 905 (2d Cir. 1965).

¹ This Court has appellate jurisdiction pursuant to the “collateral order” exception to 28 U.S.C. § 1291. *See Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684, 688-89 (1950) (holding that an order vacating an attachment is appealable as a collateral order); *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 712 (2d Cir. 1987) (same).

We have considered plaintiff's remaining arguments and find them to be without merit. We therefore **AFFIRM** the judgment of the District Court substantially for the reasons stated by the Court in its oral ruling from the bench on May 3, 2007.

FOR THE COURT,

Catherine O'Hagan Wolfe, Clerk

By _____